SUPREME COURT, U. S.

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No. 240

In the Supreme Court of the United States

OCTOBER TERM, 1968

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, ET AL., PETITIONERS

v.

W. WILLARD WIRTZ, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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1. Prior to December 1966, the Department of Labor received information from the Department of Justice that the latter was preparing to prosecute certain individuals connected with the Seafarers International Union for conduct alleged to have occurred in Chicago in 1962–1964. The nature of this information "was such, together with other available information, as to indicate that an investigation of the financial records of the Seafarers International Union of North America and certain of its affiliates, was necessary to determine whether any provisions of the Labor-Management Reporting and Disclosure

314-697—68

Act of 1959 (29 U.S.C. 401 *et seq.*), had been violated"[1] (Kleiler Affidavit, p. 2). Petitioners ultimately refused to cooperate with this investigation, and the Secretary issued subpoenas *duces tecum* for production of union records.

Petitioners then brought an action to enjoin the investigation, alleging that the Secretary was acting pursuant to a secret agreement with the Department of Justice to gather evidence for the government's prosecution (see Pet. 3–4). The Secretary moved for summary judgment and for an order enforcing the subpoenas. The district court granted the motion and issued the order (Pet. App. 18–20).[2] The court of appeals affirmed (Pet. App. 21) and subsequently denied petitioners' motion for reconsideration (Pet. App. 22–23).

2. Section 601(a) of the Act, 29 U.S.C. 521(a), authorizes the Secretary to inspect the records of any person "when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter * * *." (Pet. App. 16.) Section 607, 29 U.S.C. 527, requires the Secretary to turn over to the Attorney General any evidence "as may be found to warrant consideration for criminal prosecution under the provisions of

[1] Possible violations of the Act might include failure to report or false reporting (29 U.S.C. 439) or mishandling (29 U.S.C. 501) of union funds. Cf. *International Brotherhood of Teamsters* v. *Wirtz*, 346 F. 2d 827, 831 n. 3 (C.A.D.C.).

[2] Both the court of appeals, on April 20, 1967, and this Court, on April 21, 1967, denied petitioners' motion for a stay pending appeal; and petitioners subsequently complied substantially with the subpoenas.

this Act *or other Federal law.*" (Pet. App. 17; emphasis added.) Petitioners contend that because of the operation of these sections, inspection by the Secretary of the unions' records would violate their Fourth Amendment rights.

But the record refutes petitioners' allegation that the Secretary initiated the investigation for the purpose of gathering evidence for the government's criminal prosecution. The uncontradicted Kleiler affidavit, quoted above, shows that the Secretary was acting within his authority under Section 601(a).[3] Since the courts below have found that petitioners failed to establish a factual predicate for their constitutional claim, there is no occasion in this case to consider whether an investigation by the Secretary designed to gather evidence for a criminal prosecution of individuals would have violated any of petitioners' constitutional rights.

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1968.

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[3] It has consistently been held that the Secretary does not have to show probable cause in order to obtain access to union records. *International Brotherhood of Teamsters* v. *Wirtz*, *supra*; *International Brotherhood of Teamsters* v. *Goldberg*, 303 F. 2d 402 (C.A.D.C.), certiorari denied, 370 U.S. 938; *Goldberg* v. *Truck Drivers Local Union No. 299*, 293 F. 2d 807 (C.A. 6), certiorari denied, 368 U.S. 938.

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